



## Department of Energy

Washington, DC 20585

May 13, 2001

John T. Greeves  
Director, Division of Waste Management  
Office of Nuclear Material Safety and Safeguards  
Nuclear Regulatory Commission  
Washington, DC 20555-0001

Dear Mr. Greeves:

Thank you for your February 20, 2001, letter requesting the Department of Energy's (DOE) opinion on the Sequoyah Fuels Corporation (SFC) January 5, 2001, proposal, to designate a portion of the material at Gore, Oklahoma site as Atomic Energy Act section 11e.(2) byproduct material. DOE appreciates this opportunity to comment on the SFC proposal. Our Office of Environmental Management and the Office of General Counsel have reviewed the proposal, and although DOE has no formal opinion on this matter, we have submitted some general comments (attached).

Thank you again for this opportunity to comment on the SFC proposal. I have enjoyed working with your office on these and other related matters. If you have any questions please contact me at 202-586-6382 or Mr. David Geiser, Acting Director, Office of Long-term Stewardship at 202-586-9280.

Sincerely,

A handwritten signature in black ink, which appears to read "Gerald Boyd", is written over a horizontal line.

Gerald Boyd  
Deputy Assistant Secretary  
for Science and Technology  
Office of Environmental Management

Attachment



Printed with soy ink on recycled paper

**Department of Energy Comments on the  
Sequoyah Fuels Corporation January 5, 2001 Proposal to Designate Certain  
Material at the Gore, Oklahoma Site as Atomic Energy Act  
Section 11e.(2) Byproduct Material**

The Sequoyah Fuels Corporation (SFC) January 5, 2001 proposal asserts that the Nuclear Regulatory Commission (NRC) should designate approximately 77% (by volume) of the process wastes and contaminated soils at its Gore, Oklahoma site as Atomic Energy Act (AEA) section 11e.(2) byproduct material. The SFC requests that NRC amend the SFC license to allow for the possession and on-site disposal of 11e.(2) byproduct material. If the SFC license is amended, SFC would seek to dispose of the remaining 23% (by volume) of non-11e.(2) waste in the on-site 11e.(2) disposal cell. SFC proposes that the disposal and long-term management of the non-11e.(2) material could occur pursuant to the NRC policy on non-11e.(2) disposal in 11e.(2) disposal cells (60 Fed Reg. 49,296 (1995)) and/or pursuant to an exercise of the Department of Energy's discretionary authority under the Nuclear Waste Policy Act (NWPA) section 151(b).

As a general matter, consistent with its responsibilities under section 83 of the Atomic Energy Act of 1954, as amended by the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), the Department of Energy (DOE) is prepared to take title to the land and 11e.(2) byproduct material at NRC-licensed disposal cells, at the time the 11e.(2) license is terminated, if the State in which the disposal site is located does not exercise its option to do so. The licensee would need to transfer the land and byproduct material without cost to the United States, and DOE's sole responsibilities, under a license issued by the NRC, would be to monitor and maintain the site and take any emergency measures necessary to protect public health and safety.

DOE has recently released the baseline estimate for the cost, scope and schedule of its anticipated long-term stewardship responsibilities (*A Report to Congress on Long-term Stewardship*). This analysis is based on projections that include estimates of our future potential responsibilities under UMTRCA. These budget and management planning projections identify 28 sites that may be transferred to DOE for long-term stewardship under section 83 of the AEA, but do not take into account the possibility of a transfer of the SFC site. Consequently, DOE would need sufficient notice of a potential site transfer, so that it could take appropriate actions to ensure that any necessary funds for long-term stewardship are available to DOE at the time of transfer.

SFC proposes that, if its license is amended, the remaining non-11e.(2) material at the site could be addressed by two different options: disposal in the on-site 11e.(2) disposal cell or disposal in a separate cell. If the NRC allows the disposal of the non-11e.(2) material in the 11e.(2) licensed disposal cell, DOE would expect that the licensee would need to comply with the conditions set forth in the NRC staff's 1995 policy on the disposal of non-11e.(2) byproduct material in 11e.(2) disposal cells before transfer of the cell to DOE.

If NRC allows the disposal of the non-11e.(2) material in a separate cell, DOE's decision whether to exercise its discretionary authority to accept the transfer of the separate cell would depend in part upon compliance with the applicable requirements for site transfer, the availability of resources for long-term surveillance and maintenance, and the resolution of any outstanding liability and dual regulation issues before transfer. We anticipate that, pursuant to our March 2001 agreement in principle, both NRC and DOE will continue to seek to develop a memorandum of understanding that would define the criteria and process that each agency would use to make determinations regarding the potential transfer of non-11e.(2), low-level waste sites to DOE.